

WAVERLY WOODS DEVELOPMENT  
CORPORATION,

Petitioner

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BEFORE THE ZONING BOARD

OF HOWARD COUNTY

Zoning Board Case No. 1097M

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### **DECISION AND ORDER**

On May 16, 2012, the Zoning Board of Howard County, Maryland ("Board") considered the petition of Waverly Woods Development Corporation ("Petitioner") to amend the Zoning Map of Howard County to reclassify from the PEC (Planned Employment Center) Zoning District to the PSC (Planned Senior Community) Zoning District, a 17.628 acre parcel of land located on the west side of Marriottsville Road, and generally to the north and northwest of Barnsley Way, described as Tax Map 16, Grid 4, Parcel 249, Parcels B & C, 2200 Marriottsville Road, in the Third Election District of Howard County (the "Property"). Petitioner also seeks to amend the Preliminary Development Plan ("PDP") approved in ZB 1027M, to relocate a proposed clubhouse from a location on the approved PDP to the adjoining 17.628 acre Property.

The notice of hearing was advertised, the Property was posted with notice of the hearing, and the adjoining property owners were mailed notice of the hearing as evidenced by the certificates of posting, advertising, and mailing to adjoining property owners which were entered into the record. Pursuant to the Zoning Board's Rules of Procedure, all reports and official documents pertaining to the petition, including the petition, the Technical Staff Report of the Department of Planning and Zoning ("DPZ") and Decision and Order in Zoning Board Case No. 1027M, and the Technical Staff Report of DPZ and the Planning Board's Recommendation in this case, were entered or incorporated into the record of the hearing. Both DPZ and the Planning Board recommended approval of the petition.

Petitioner was represented by Ronald Spahn, Esquire and Megan L. Reuwer, Esquire. Two residents testified and asked questions of Petitioner's witnesses, but did not oppose the proposed rezoning. The Board conducted a hearing on May 16, 2012. After careful evaluation of the evidence, the Board makes the following Findings of Fact and Conclusions of Law:

#### FINDINGS OF FACT

1. The 17.628 acre Property is part of the planned community of Waverly Woods. Immediately adjacent to the Property, on the north, south, and west sides of the Property, is PSC zoned "Waverly Woods West," a 151.3 acre site that is currently being developed with age-restricted single family attached and detached homes. Across Marriottsville Road to the east is Warwick Way. On the north side of Warwick Way is the site of the Waverly Mansion. On the south side of Warwick Way is the PEC zoned Waverly Woods commercial area, which is improved with office and retail buildings.

2. The Petitioner proposes rezoning the Property from PEC to PSC and has submitted an Amended PDP depicting proposed development of the Property as well as the adjacent 151.3 acre Waverly Woods West property. On June 18, 2003, in ZB 1027M, the Zoning Board rezoned the adjacent 151.3 acre site (referred to herein as "Waverly Woods West") from PEC to PSC and approved a PDP depicting development of 350 single family detached dwellings and "villas" (single-family attached dwellings) on an extensive private road system connected to Barnsley Way, which, in turn, intersects Marriottsville Road and Warwick Way. The PDP approved in ZB 1027M further represents the construction of a 3,500 square foot community center building in Waverly Woods West, indicates that a health and fitness facility will be located on the Property that is the subject of this petition, and shows two private gated entrances serving the residences along Barnsley Way.

Unlike the PDP approved in ZB 1027M, Petitioner's Amended PDP incorporates the 17.628 acre Property into the Waverly Woods West development. It also proposes (assuming the Property is rezoned PSC) the (a) development of 112 additional condominium units on the Property, (b) replacement of the 3,500 square foot community center with a 5,610 square foot community center on the Property, (c) construction of a swimming pool adjacent to the enlarged community center, (d) removal of the two private gated entrances along Barnsley Way, and (e) elimination of a separate fitness facility on the Property.

3. Because the PSC Zoning District is a floating zone, Petitioner presented testimony and evidence relating to the criteria set forth in Section 127.1.H. of the Zoning Regulations rather than the change-mistake rule applicable to Euclidean rezoning cases. Petitioner also presented testimony and evidence relating to the standards for approval of documented site plans contained in Section 100.G.2.d. of the Zoning Regulations.

4. Three witnesses testified on behalf of Petitioner: Donald R. Reuwer, Jr., Jared Spahn, and Joseph Rutter. Donald R. Reuwer, Jr. has been involved with the development of Waverly Woods since 1981. Mr. Reuwer testified that senior housing has been successful in Waverly Woods East because it is large and offers community amenities that are attractive to seniors such as golf, tennis, fitness centers, and swimming pools. Mr. Reuwer also attributed the success of senior housing in Waverly Woods East to the fact that community amenities for seniors may only be used by seniors and the development's proximity to the nearby shopping center. Mr. Reuwer stated that he believes Waverly Woods West, including development of the Property as PSC, will be successful for the same reasons.

5. Jared Spahn, Principal of First Real Estate Management, testified that First Real Estate Management manages the various homeowners associations within Waverly Woods,



including the senior housing associations in Waverly Woods East. Mr. Spahn stated that he believes First Real Estate Management will be successful in managing the amenities in Waverly Woods West, including the proposed enlarged clubhouse and swimming pool represented in the Amended PDP. Mr. Spahn testified that if the Property is rezoned PSC, the Property would be annexed and thereby included in the senior homeowners association for Waverly Woods West.

6. Joseph Rutter, a partner in Land Design and Development, testified on behalf of the Petitioner, first addressing the elimination of the fitness center and gated entrances on the Amended PDP. Mr. Rutter explained that Petitioner is not eliminating a fitness center, but will be incorporating a fitness center into the enlarged 5,610 square foot community center that will be required by the Zoning Regulations based upon approval of 112 additional units. According to Mr. Rutter, a fitness center has been successfully incorporated into the senior housing community center in Waverly Woods East.

Mr. Rutter stated that gated entrances have been eliminated because of experiences in other communities, specifically because they require maintenance, do not always operate correctly, and do not truly provide security. He stated that eliminating the gates was a policy decision and stressed that Waverly Woods West was never marketed as a gated community.

Mr. Rutter was asked why the developer did not request PSC zoning for the Property when it requested PSC zoning for Waverly Woods West in 2002. Mr. Rutter stated that he could not respond specifically as to the developer's thinking since he was not involved at that time, but explained that it had been the general thinking around that time that Route 70 would develop as an employment corridor and that has not taken place. Mr. Rutter stated that Waverly Woods currently has 200,000 square feet of commercial area available, sufficient to meet current demand.

Mr. Rutter went through the requirements of Section 127.1.B. and H. of the Zoning Regulations, as well as the documented site plan factors of Section 100.G.2.d., and provided specific testimony that all of the requirements set forth in the Zoning Regulations have been satisfied. The Board finds that Mr. Rutter's testimony was persuasive, uncontested, and consistent with DPZ's conclusions in its Technical Staff Report.

7. Leon and Linda Harney, 7201 Kindler Court, Columbia, Maryland 21046, asked questions of Petitioner's witnesses, but did not testify or otherwise oppose the proposed rezoning or Amended PDP.

#### CONCLUSIONS OF LAW

1. In order to grant the requested rezoning, the Board must find that all of the requirements set forth in Section 127.1.H. have been satisfied. Based on the petition, the Technical Staff Report of DPZ, and testimony provided at the hearing, the Board finds that Petitioner has satisfied the requirements of Section 127.1.H., and specifically concludes as follows with respect to each of regulatory criteria:

a. The proposed district will accomplish the purposes of the PSC District.

The purposes of the PSC District are detailed in Section 127.1.A. of the Zoning Regulations; they include (1) permitting development of housing designed to meet the needs of older adults and senior persons and (2) ensuring that the proposed development is carefully planned and compatible with residential neighborhoods. Mr. Rutter testified that the development will incorporate universal design features for older adults. The proposed garden condominium units will be compatible with Waverly Woods West as well as nearby residential neighborhoods due to site design and buffering proposed in the Amended PDP. Accordingly, the Board concludes that the proposed district will accomplish the purposes of the PSC District.

- b. The site meets the requirement of Section 127.1.B.

The Board finds that the requirements of Section 127.1.B.1. through B.8 have been satisfied as set forth below:

- (1) At the preliminary development plan stage and subsequent stages of plan processing and development, the site shall be served by both public water and public sewer.

Mr. Rutter testified and DPZ noted in its Technical Staff Report that the Property is within the Planned Service Area and Metropolitan District. Accordingly, the Property will be served by both public water and public sewer as required by Section 127.1.B.1.

- (2) The site has direct access to a collector or arterial road designated in the General Plan.

Mr. Rutter testified and the Technical Staff Report indicates that Marriottsville Road is an Intermediate Arterial road. The Property has direct access to Marriottsville Road via Barnsley Way.

- (3) The development shall contain at least 50 dwelling units.

The Amended PDP depicts 112 dwelling units on the Property and a total of 462 units in Waverly Woods West, including the Property. Accordingly, the development meets the threshold established in Section 127.1.B.3.

- (4) The development shall contain at least two of the following types of housing: single-family detached dwellings, single-family attached dwellings, apartments, assisted living facilities, and nursing homes. At least one of the housing types shall be independent single-family or multi-family dwellings.

The Technical Staff Report notes that “[t]aken literally, this section requires that any new PSC District development requires at least two



housing types; however, the current petition relies upon combining the Site with the existing PSC development of the Approved PDP and Criteria in order to satisfy this criterion.” Technical Staff Report at pp. 8-9. The Property, standing alone, will contain only condominiums, and will not have at least two types of housing.

The Board, however, concludes that it is appropriate, given the particular circumstances in this case, to consider the 17.628 acre Property and the 151.3 acre Waverly Woods West to be a single PSC Zoning District. Indeed, Petitioner presented testimony that the Property will be annexed and included in the senior homeowners association for Waverly Woods West. The Property and Waverly Woods West will also be served by the same community center, pool, walking paths and seating areas. Because the PSC District (including the Property and Waverly Woods West) will have at least two types of housing, the Board concludes that Petitioner has satisfied Section 127.1.B.4. of the Zoning Regulations.

- (5) Open space shall constitute at least 35% of the gross acreage of the planned senior community.

Mr. Rutter testified and the Technical Staff Report indicates that the total open space provided will be 47.6% of the Property, which is greater than 35%.

- (6) The community shall include recreation and common areas for residents, including at least pathways and seating areas.

Mr. Rutter testified that Waverly Woods West, including the Property, will be served by a community center that includes a fitness

center, a swimming pool, and an extensive pathway system and seating areas.

- (7) At least ten percent of the dwelling units shall be moderate income housing units.

Mr. Rutter testified that at least 12 moderate income housing units will be provided based upon the additional 112 housing units. Accordingly, Petitioner has satisfied Section 127.1.B.7.

- (8) At least one on-site community building or interior community space shall be provided that contains a minimum of:  
(a) 20 square feet of floor area per dwelling unit, for the first 99 dwelling units with a minimum area of 500 square feet,  
and  
(b) 10 square feet of floor area per dwelling unit for each additional dwelling unit above 99.

Mr. Rutter testified that the community center will be 5,610 square feet which satisfies the requirement of Section 127.1.B.8.

- c. Safe public road access is available to and from the site in accordance with Section 127.1.H.3.

Mr. Rutter testified that Marriottsville Road is in the process of being widened and that there is a project to improve the bridge and intersection of Marriottsville Road and Route 70. Mr. Rutter also noted that Barnsley Way and Marriottsville Road will be signalized and that there are currently signals at Marriottsville Road and Warwick Way. Based upon Mr. Rutter's testimony and the conclusion of DPZ in the Technical Staff Report that safe access is available, the Board concludes that Section 127.1.H.3. is satisfied.

- d. Proposed buildings and site design are compatible with residential development in the vicinity in accordance with the standards set forth in Section 127.1.H.4.a. and b.



The Board adopts the findings of the Department of Planning and Zoning on page 9 of the Technical Staff Report in concluding that Petitioner has satisfied this standard. As noted in the Technical Staff Report, the Property will be integrated into the Waverly Woods West community. Structures will be adequately buffered from Marriottsville Road through retention of existing vegetation and a 700 foot setback.

- e. Sufficient area is set aside as open space to provide green area and recreational amenities for the residents and transition areas and buffering for adjacent neighborhoods.

The Board concludes that Petitioner has set aside sufficient open space (greater than the 35% required by the Zoning Regulations). Sufficient recreational amenities will also be provided (i.e., community building including a fitness center, swimming pool, walking paths, and seating areas). Waverly Woods West is sufficiently distant from residential properties that are not within the community as noted in the Technical Staff Report so that buffering for adjacent neighborhoods is not an issue.

- f. Suitable common areas and amenities are provided for residents, including pathways, seating areas, and adequately sized community building or interior space.

As noted in the previous paragraph, suitable common areas and amenities will be provided for residents.

- g. Business uses which are permitted as accessory uses will be sized for use solely by residents of the PSC District.

There are no proposed business uses so this section is inapplicable.

- h. For a development that will be built in phases, open space areas will be provided in each phase to meet the needs of the residents unless otherwise provided in an earlier phase.

Mr. Rutter testified that the development will not be built in phases. Accordingly, this section is inapplicable.

- i. The development incorporates universal design features from the Department of Planning and Zoning guidelines that identify the required, recommended and optional features as set forth in Section 127.1.H.9.

Mr. Rutter testified that the development will incorporate universal design features that are in effect at the time of development. Accordingly, the Board concludes that Petitioner has satisfied Section 127.1.H.9.

- j. The development will be subject to covenants or other legal restrictions enforcing the age restrictions required for the zoning district.

Mr. Rutter testified, as did Mr. Spahn, that the Property will be included in the Waverly Woods West senior homeowners association and, therefore, will be subject to legal restrictions enforcing the age restrictions required by the PSC Zoning District.

- k. The location of the proposed site is in conformity with the General Plan.

The Board concludes that the location of the Property and its proposed rezoning to PSC is in conformity with the General Plan, one purpose of which is to provide diversity of housing types. Developing the Property with condominiums will increase the diversity of housing types within Waverly Woods West.

2. Based on the above, Petitioner has presented sufficient evidence for the Board to conclude that all of the factors set forth in Section 127.1.H. of the Zoning Regulations have been satisfied and the Property may be rezoned to PSC.

3. The Board further concludes that the Property should be rezoned to PSC, given Petitioner's thorough satisfaction of the required regulatory factors and the Property's compatibility and integration with the existing PSC-zoned Waverly Woods West community. As noted in Conclusion of Law 1.b.(4) above, the Board concludes that it is appropriate, given the particular circumstances in this case, to consider the 17.628 acre Property and the 151.3 acre Waverly Woods West to be a single PSC Zoning District.

4. The Board concludes that the Amended PDP submitted by Petitioner satisfies all of the criteria set forth in Section 100G.2.d. of the Zoning Regulations for the reasons stated by Mr. Rutter and noted by DPZ in the Technical Staff Report. Development of the Property with 112 age-restricted condominiums is compatible with the age-restricted housing use of adjoining Waverly Woods West and is compatible with the greater Waverly Woods community to the east. The environmental integrity of the Property and adjoining areas has been protected through the retention of vegetative buffers as noted in the Amended PDP. As noted in Conclusion of Law 1.c. above, safe road access is available to serve development proposed on the Amended PDP. Finally, the proposed development is compatible with and serves General Plan 2000 Balanced and Phased Growth Policy 4.3 to “[e]nsure an adequate housing supply for the elderly, disabled and special populations.”

5. The Board determines that an additional requirement is necessary to ensure that Petitioner’s use of the Property is compatible with surrounding residential and commercial uses. Pursuant to Section 100.G.2.e. of the Zoning Regulations, Petitioner shall pursue a signalized pedestrian crosswalk at Marriottsville Road, Barnsley Way, and Warwick Way, subject to approval by Howard County.

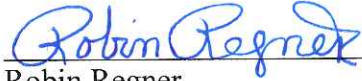
3. The Board approves the Amended PDP subject to and supplemented by the crosswalk condition imposed in Conclusion of Law 5 above.

For the foregoing reasons, the Zoning Board of Howard County, on this 31<sup>st</sup> day of July, 2012, hereby GRANTS Petitioner’s request for rezoning of the Property from PEC to PSC Zoning District and GRANTS approval of the Amended PDP subject to and supplemented by the additional requirement set forth herein.



ATTEST:

ZONING BOARD OF HOWARD COUNTY

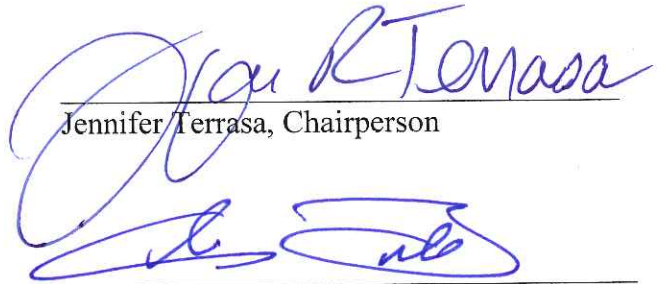


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